

## Federal Deposit Insurance Corporation

## § 391.48

### § 391.47 [Reserved]

### § 391.48 Rebuttal of control agreement.

#### Agreement

#### Rebuttal of Rebuttable Determination Of Control Under Subpart A

##### I. WHEREAS

A. [ ] is the owner of [ ] shares (the “Shares”) of the [ ] stock (the “Stock”) of [name and address of State savings association], which Shares represent [ ] percent of a class of “voting stock” of [ ] as defined under the Acquisition of Control Regulations (“Regulations”) of the FDIC, Subpart A of Part 391 (“Voting Stock”);

B. [ ] is a “State savings association” within the meaning of the Regulations;

C. [ ] seeks to acquire additional shares of stock of [ ] (“Additional Shares”), such that [ ]’s ownership thereof will represent 10 percent or more of a class of Voting Stock but will not represent 25 percent or more of any class of Voting Stock of [ ]; and/or [ ] seeks to [ ], which would constitute the acquisition of a “control factor” as defined in the Regulations (“Control Factor”);

D. [ ] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [ ] or in connection with or as a participant in any transaction having such purpose or effect;

E. The Regulations require a company or a person who intends to hold 10 percent or more but not 25 percent or more of any class of Voting Stock of a State savings association or holding company thereof and that also would possess any of the Control Factors specified in the Regulations, to file and obtain clearance of a notice (“Notice”) under the Change in Control Act (“Control Act”), 12 U.S.C. 1817(j), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted.

F. Under the Regulations, [ ] would be determined to be in control, subject to rebuttal, of [ ] upon acquisition of the [Additional Shares or Control Factor];

G. [ ] has no intention to manage or control, directly or indirectly, [ ];

H. [ ] has filed on [ ], a written statement seeking to rebut the determination of control, attached hereto and incorporated by reference herein, (this submission referred to as the “Rebuttal”);

I. In order to rebut the rebuttable determination of control, [ ] agrees to offer this Agreement as evidence that the acquisition of the [Additional Shares or Control Factor] as proposed would not constitute an acquisition of control under the Regulations.

II. The FDIC has determined, and hereby agrees, to act favorably on the Rebuttal, and in consideration of such a determination and

agreement by the FDIC to act favorably on the Rebuttal, [ ] and any other existing, resulting or successor entities of [ ] agree with the FDIC that:

A. Unless [ ] shall have filed a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and shall have obtained clearance of the Notice in accordance with the Regulations, [ ] will not, except as expressly permitted otherwise herein or pursuant to an amendment to this Rebuttal Agreement:

1. Seek or accept representation of more than one member of the board of directors of [insert name of State savings association and any holding company thereof];

2. Have or seek to have any representative serve as the chairman of the board of directors, or chairman of an executive or similar committee of [insert name of State savings association and any holding company thereof]’s board of directors or as president or chief executive officer of [insert name of State savings association and any holding company thereof];

3. Engage in any intercompany transaction with [ ] or [ ]’s affiliates;

4. Propose a director in opposition to nominees proposed by the management of [insert name of State savings association and any holding company thereof] for the board of directors of [insert name of State savings association and any holding company thereof] other than as permitted in paragraph A-1;

5. Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the stockholders [ ] other than in support of, or in opposition to, a solicitation conducted on behalf of management of [ ];

6. Do any of the following, except as necessary solely in connection with [ ]’s performance of duties as a member of [ ]’s board of directors:

(a) Influence or attempt to influence in any respect the loan and credit decisions or policies of [ ], the pricing of services, any personnel decisions, the location of any offices, branching, the hours of operation or similar activities of [ ];

(b) Influence or attempt to influence the dividend policies and practices of [ ] or any decisions or policies of [ ] as to the offering or exchange of any securities;

(c) Seek to amend, or otherwise take action to change, the bylaws, articles of incorporation, or charter of [ ];

(d) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the management, policies or business operations of [ ]; or

(e) Seek or accept access to any non-public information concerning [ ].

B. [ ] is not a party to any agreement with [ ].